

Senate Bill No. 408

CHAPTER 21

An act to amend Section 12370 of the Penal Code, relating to body armor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 2, 2010. Filed with Secretary
of State June 2, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 408, Padilla. Body armor.

Existing law provides that any person who has been convicted of a violent felony who purchases, owns, or possesses body armor, as defined in the California Code of Regulations, except as authorized, is guilty of a felony, punishable by imprisonment in a state prison for 16 months or 2 or 3 years. However, the court, in *People v. Saleem* (102 Cal.Rptr.3d 652), held that this provision is unconstitutionally vague in violation of due process.

This bill would change the definition of "body armor" for purposes of this provision to mean any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor. By expanding the scope of an existing crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 12370 of the Penal Code is amended to read:

12370. (a) A person who has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5, under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in subdivision (f), except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or two or three years.

(b) A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony

conviction, may file a petition with the chief of police or county sheriff of the jurisdiction in which he or she seeks to possess and use the body armor for an exception to this prohibition. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as he or she deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on his or her person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

(e) For purposes of this section only, "violent felony" refers to the specific crimes listed in subdivision (c) of Section 667.5, and to crimes defined under the applicable laws of the United States or any other state, government, or country that are reasonably equivalent to the crimes listed in subdivision (c) of Section 667.5.

(f) For purposes of this section, "body armor" means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public and law enforcement in California from current and ongoing crimes involving the possession and use of body armor by persons previously convicted of violent felonies, it is necessary that this legislation take effect immediately.